

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JULIAN MONTESINO,
Plaintiff,

v.

Civil Action No. 05-10319-RWZ

BRUCE E. CHADBOURNE, and the
IMMIGRATION AND NATURALIZATION
SERVICE ("INS") CUSTOM SERVICE,
Defendants.

ORDER ON APPLICATION TO PROCEED
WITHOUT PREPAYMENT OF FEES

Now before the Court is plaintiff's Application to Proceed Without Prepayment of Fees and Affidavit:

FINDINGS

The Court finds the following:

A. Is plaintiff a "prisoner" as defined in 28 U.S.C. § 1915(h)?

Yes No

B. Is a filing fee, under 28 U.S.C. § 1915(b), to be assessed at this time?

1. Yes Plaintiff is obligated to pay the statutory filing fee immediately. See 28 U.S.C. § 1915(b)(1). (\$250.00 for a civil action).

2. Yes An initial partial filing fee of \$3.64 is assessed pursuant to 28 U.S.C. § 1915(b)(1). The remainder of the fee \$246.36 is to be assessed in accordance with 28 U.S.C. § 1915(b)(2).

3. Yes Plaintiff has proffered evidence of being without funds for six months and being currently without funds. Under 28 U.S.C. § 1915(b)(2), plaintiff is assessed an obligation to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account each time it exceeds \$10.00 towards the payment of the \$150.00 filing fee.

4. No Plaintiff is not assessed a filing fee at this time.

C. After screening pursuant to 28 U.S.C. § 1915 and/or 28 U.S.C. § 1915A, which, if any, of the following findings does the court make?

1. Has the court determined that the complaint is frivolous, malicious, or fails to state a claim upon which relief may be granted?

No Yes as to the claims against defendant(s)

2. Has the court determined that the complaint seeks relief from a defendant or defendants who are immune from such relief?

No Yes as to the claims against defendant(s)

3. 42 U.S.C. § 1997e, Sec. 7(g)(2):

"The court may require any defendant to reply to a complaint . . . if it [the court] finds that the plaintiff has a reasonable opportunity to prevail on the merits."

Has the court first, determined that the complaint is sufficient to satisfy the pleading requirements for stating a cognizable claim and, second, found that the plaintiff has a reasonable opportunity to prevail on the merits on the remaining claims in the complaint against one or more defendants?

a. Yes The court has so determined and found as to all defendants.

b. No because the court has determined that the complaint does not satisfy pleading requirements for stating a cognizable claim against

all defendants the defendant(s)

c. No because the court has determined that the likelihood that plaintiff will prevail on the merits falls short of the "reasonable opportunity" standard of the statute, as to claims against

all defendants the defendant(s)

d. Cannot say

It is not feasible for the Court to make a determination on these questions on the present record as to the remaining claims against
 all defendants the defendant(s)

ORDERS

Based upon the foregoing, it is ORDERED:

1. May the application to proceed without prepayment of fees be GRANTED?

Yes No

2. If a finding is made under paragraph B above, is it a provisional finding that is subject to early modification?

Yes No

If the above answer is Yes, the following applies: If the plaintiff files, within 35 days of the date of this Order, either a certified copy of his/her prison trust account, or a statement signed by plaintiff under the pains and penalties of perjury, showing eligibility to proceed in this action without paying a filing fee or without payment of as much as found in paragraph B above to be assessed the plaintiff, the court will consider the certificate or statement in determining whether to modify paragraph B.

3. Is it FURTHER ORDERED, in accordance with 28 U.S.C. § 1915(b)(2), that the clerk send a copy of this Order to the institution having custody of plaintiff?

Yes No

4. Is it FURTHER ORDERED that the Clerk issue summons and the United States Marshal serve a copy of the complaint, summons, and this order as directed by the plaintiff with all costs of service to be advanced by the United States?

No Yes as to all defendants

only as to defendants

5. Is it FURTHER ORDERED that the Clerk dismiss certain claims in this action ?

No Yes as to all defendants

only as to defendant(s)

6. a. Although defendant(s) may not have been served with a summons and complaint, are the defendant(s) invited but not required to file an answer to aid the court in reaching a prompt final disposition on the merits?

No Yes as to all defendants

only as to defendant(s)

OR

b. If the defendant(s) have been served with a summons and complaint, are the defendant(s) required to reply within the time specified in the summons?

No Yes as to all defendants

only as to defendants

February 22, 2005

DATE

/s/ Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE